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No. 84-1285

IN THE
SUPREME COURT OF THE UNITED STATES

1984 - 1985 Term

MARY JANE PALMER,

Petitioner,

vs.

FRANK W. PALMER, and
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
an Insurance Corporation,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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TABLE OF CONTENTS

Subject Index

Reasons for Denying the Writ..... 2

Conclusion..... 9

TABLE OF AUTHORITIES

Cases

Moran v. Beyer, 734 F.2d 1245 (7th Cir., 1984)..... 2

State Farm Mutual Automobile Insurance Company v. Palmer, 123 Ill.App.3d 674, 463 N.E.2d 129, 78 Ill.Dec. 951 (Ill.App.3d Dist., 1984)..... 3

Fernandez v. Romo, 132 Ariz. 447, 646 P.2d 878 (1982)..... 7

Schwartz v. Schwartz, 103 Ariz. 562, 447 p.2d 254 (1968)..... 7

CONSTITUTION PROVISIONS AND STATUTES

Constitution of the United States, Amendment XIV..... 7

Chapter 40, Section 1001, Illinois Revised Statutes..... 2,3,6

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Respondent, FRANK W. PALMER, respectfully prays that this Court deny the Petition for a Writ of Certiorari seeking review of the constitutionality of the Illinois interspousal tort immunity statute.

REASONS FOR DENYING THE WRIT

I.

THE DECISION OF THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT IN MORAN V. BEYER, 734 F.2d 1245 (7th CIR., 1984) SHOULD BE LIMITED TO INTENTIONAL INTERSPOUSAL TORTS.

At the time Mary Jane Palmer's cause of action arose on September 12, 1981, the following statute was in effect in Illinois:

> "A married woman may, in all cases, sue and be sued without joining her husband with her, to the same extent as if she were unmarried; provided, that neither husband nor wife may sue the other for a tort to the person committed during coverture. An attachment or judgment in such action may be enforced by or against her as if she were a single woman." Ill.Rev.Stats., Chapter 40, Section 1001 (1979).

Effective September 24, 1981, the law was amended to read as follows:

> "A married woman may, in all cases, sue and be sued without joining her husband with her, to the same extent as if she were unmarried; provided, that neither husband nor wife may sue the other for a tort to the person committed during coverture, other than an

> intentional tort...An attachment or judgment in such action may be enforced by or against her as if she were a single woman." Ill.Rev.Stats., Chapter 40, Section 1001 (1983).

In State Farm Mutual Insurance Company v. Palmer, 123 Ill.App.3d 674, 463 N.E.2d 129, 78 Ill.Dec. 951 (Ill.App. 3d Dist., 1984), the Illinois Third District Appellate Court retroactively allowed Mary Jane Palmer's intentional tort claim. The decision of the Illinois Appellate Court in State Farm Mutual Insurance Company v. Palmer is consistent with this new legislative amendment and with the rationale advanced in Moran regarding intentional interspousal torts.

The Court of Appeals in Moran found that there was no rational relationship between the Illinois interspousal tort immunity statute and the purpose of maintaining marital harmony under circumstances involving a "physically battered spouse." Id. at 1247.

These are not the circumstances under which Mary Jane Palmer calls upon this Court to review the rational relationship between the Illinois interspousal tort immunity statute and the purpose of maintaining marital harmony or any other reasonable governmental objective. Mary Jane Palmer will have her day in court against Frank Palmer concerning the alleged intentional tort inflicted upon her. She also now seeks a judicial declaration that this inquiry is the same in connection with a negligent tort. Frank Palmer urges this Court to reject this interpretation.

A clearly reasonable governmental objective exists for the classification distinguishing married and non-married persons in that the state has a valid interest in protecting marriages. The interspousal tort immunity doctrine prevents one spouse from gaining at the expense of the

other and thereby destroying the community of interests which constitutes the marriage.

There is a significant difference on the impact of the marital relationship when a spouse is injured "negligently" as opposed to "intentionally" by conduct of the other spouse. While the very nature of an intentional tort is pervasively disrupting to the marital relationship, such is not the case with a negligently inflicted tort. The subsequent discord and stress of an action against the negligent spouse by the injured spouse is much more likely to strain or destroy the marriage.

The Act serves an additional purpose of preventing fraudulent claims. If a spouse were able to collect for injuries to the person on a negligence theory, there would be a realistic temptation to bring fraudulent claims against the other spouse.

A similar temptation does not exist for claims for property damage because the

recovery in such cases is limited to the amount proved to have been lost. The effect of an action for property damage is to restore the parties to their original position and one party does not gain from bringing the action. Because of the lack of gain, there is no temptation to bring fraudulent claims and disrupt the marriage.

Because Ill.Rev.Stats., Chapter 40, Section 1001 protects marriages and prevents fraud, the classification discriminating between married and non-married persons and persons who suffer personal injuries and persons who suffer injuries to property is justifiable and should be upheld in the context of a negligent tort.

II.

THE ILLINOIS INTERSPOUSAL TORT IMMUNITY STATUTE DOES NOT VIOLATE THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE UNITED STATES CONSTITUTION

MARY JANE PALMER, at page 7 of her Petition, argues that Ill.Rev.Stats.,

Chapter 40, Section 1001, is unconstitutional because it violates the privileges and immunities clause of the Fourteenth Amendment to the United States Constitution. She bases her argument on Fernandez v. Romo, 132 Ariz. 447, 646 P.2d 878 (1982) and its companion case, Schwartz v. Schwartz, 103 Ariz. 562, 447 P.2d 254 (1968).

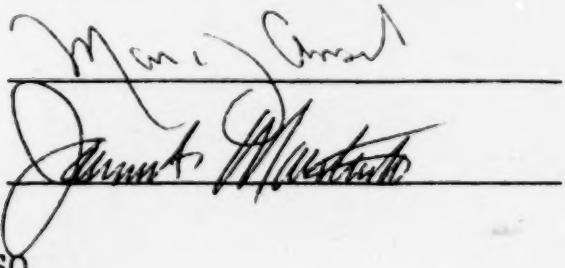
The Arizona cases of Fernandez v. Romo and Schwartz v. Schwartz do not support the argument that the Illinois interspousal tort immunity statute violates the privileges and immunities clause. In Schwartz v. Schwartz, the Arizona Supreme Court applied the New York law of interspousal tort immunity to apply to a suit between a New York domiciled husband and wife resulting from an accident which occurred in Arizona. This was a conflicts-of-law case.

In Fernandez v. Romo, the Arizona court simply abolished its court-created doctrine of interspousal tort immunity. Neither case involved the privileges and immunities clause.

CONCLUSION

The Illinois Supreme Court's decision not to review an Illinois Appellate Court's decision upholding the constitutionality of the Illinois interspousal tort immunity statute concerning negligent torts between spouses should not be disturbed. Because there is a rational relationship between the statute and its purpose in connection with interspousal negligent torts, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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